

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT AND CALIFORNIA
VIRTUAL ACADEMY AT SAN DIEGO
CHARTER.

OAH CASE NO. 2013040552

ORDER DENYING MOTION TO
AMEND COMPLAINT

On April 9, 2013, Parents on behalf of Student filed a due process hearing request (complaint), naming the Spencer Valley Elementary School District (District). On April 12, 2013, Parents filed a “Request to Add Parties and Amend Complaint,” which sought to (i) add as a party the California Virtual Academy at San Diego Charter (CAVA) and (ii) add additional allegations against District and new allegations against CAVA. By Order dated April 22, 2013, Office of Administrative Hearings (OAH), permitted Student to amend the complaint by means of the “Request.” OAH’s Order referenced the general requirement that amended complaints should be filed as a complete new document, containing all the parties’ allegations on which they wish to proceed, so as to avoid the confusion inherent in comparing the original complaint with subsequent documents containing changes to the parties or allegations. OAH’s Order specifically stated: “Although the better practice is to include all claims in one complaint, Student’s complaint and request set forth Student’s claims against both District and CAVA in a brief and straightforward manner, and will be ordered read together as Student’s amended complaint.”

On April 23, 2013, Student filed a “Motion to Withdraw Specific Complaint,” seeking to “withdraw amended (specific complaint) without prejudice, while leaving original complaint intact.” The Motion goes on to explain particular allegations in the prior filings that Parents wish to withdraw, and specific allegations on which Parents still wish to proceed. The Motion does not clarify which parties Parents intend to proceed against, and it confusingly mentions an “amended complaint filed on April 22, 2013,” although no such document with such date exists in the case file.

APPLICABLE LAW

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C.

§1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

DISCUSSION AND ORDER

The Motion is denied. The original complaint, amended by the Request, then subsequently amended by this Motion, would create confusion regarding which parties and claims are at issue, and which have been withdrawn. This denial is without prejudice to Parents requesting that certain issues be dismissed at the prehearing conference or without prejudice to Parents seeking to amend the complaint to clarify what they affirmatively want to proceed to hearing on. Parents may invoke their right to amend by filing a new Motion to do so, however they must attach a complete new amended complaint document. Such new amended complaint should contain all the allegations on which they wish to proceed, should clarify which parties they wish to proceed against, and should omit anything they want withdrawn, without requiring prior drafts to be compared. OAH will re-consider any such Motion, if and when properly filed.

ORDER

The Motion to Withdraw Specific Complaint is denied.

Dated: May 03, 2013

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings